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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/734,500	12/12/2003	Demetrius Bagley	1016760032P2	1614
34284	7590	09/16/2008		
Rutan & Tucker, LLP. 611 ANTON BLVD SUITE 1400 COSTA MESA, CA 92626			EXAMINER RYCKMAN, MELISSA K	
			ART UNIT 3773	PAPER NUMBER
			MAIL DATE 09/16/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/734,500

Applicant(s)

BAGLEY ET AL.

Examiner

MELISSA RYCKMAN

Art Unit

3773

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 May 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 23, 24, 33, 34, 37, 38 and 41-43 is/are pending in the application.
- 4a) Of the above claim(s) 41-43 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 23, 24, 33, 34, 37 and 38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ ~~Notice of Informal Patent Application~~
- 6) ☐ Other: _____

DETAILED ACTION

This office action is in response to arguments filed 5/2/08.

The examiner has reevaluated the claims submitted on 1/19/07 and has determined a restriction is proper regarding the newly submitted claims 41-43. The newly submitted claims are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: claim 41 includes the limitations for a second gear rack, claim 38 includes a slide, claims 41-43 are directed to Figures 28-31, the originally presented invention was directed towards the embodiment as shown in Figs. 1-27.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 41-42 withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 23, 24, 37, and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Utsugi (US 4198960) and further in view of Rydell (US 5163942). Utsugi teaches a retrieval device comprising:

- A hollow handle (Fig. 1)
- An elongate sheath (30) extending from the handle
- A three-dimensional basket (33) having at least three legs, the distal end is coupled to a tip member (34), the proximal end of first and second legs being connected to the distal end of the first operating member, and the proximal end of a third leg being connected to the distal end of the second operating member ("col. 4, ll. 36-43, "the trapping wires 33 are individually operated")
- A first actuator (col. 4, ll. 36-43, "the trapping wires 33 are individually operated") configured to extend a first operating member so as to extend the first and second legs, and to simultaneously retract the second operating member so as to retrace a third leg (Fig. 7), such that the tip member is displaced rearward and the first and second legs are displaced away from each other to facilitate maneuvering the basket around an object (Fig. 7)
- A second actuator (col. 4, ll. 36-43, "the trapping wires 33 are individually operated") configured to simultaneously extend or retract the legs of the basket such that the basket translates forward or rearward depending on the direction of manipulation of the second actuator (capable of simultaneously moving)

Utsugi teaches (col. 4, ll. 36-43), "the trapping wires 33 are individually operated", but does not specify operating members. However, Rydell teaches the following limitations:

- A first operating member (148) having a proximal end positioned within the handle (52) and a distal end positioned adjacent the distal end of the sheath

(140) such that the first operating member extends from within the handle and into the sheath

- A second operating member (132,202) having a proximal end positioned within the handle (52) and a distal end positioned adjacent the distal end of the sheath (140) such that the second operating member extends from within the handle and into the sheath
- Wherein the first actuator comprises a wheel (146)
- Wherein the second actuator comprises a slide (132) that is actuated by axially translating the slide

It would have been obvious to one of ordinary skill in the art to combine Utsugi and Rydell as having a wheel for an actuator and a slide for a second actuator are commonly known actuators in the art, and are useful in maneuvering objects. The substitution of the actuation of Utsugi with the actuator of Rydell, the replacement would be expected to yield a device which actuates the basket as described in the claims (this is a predictable result).

Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Utsugi and Rydell, as applied to claims 23 above, and further in view of McClellan et al. (US 2002/0019594).

The combination of Utsugi and Rydell teach all limitations of preceding dependent claim 23, but fails to teach wherein the legs are formed of shape memory material. McClellan teaches a surgical retrieval device wherein the legs are formed of

shape memory material in order to aid in releasing the basket from its radially restrained configuration for insertion. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combination of Utsugi and Rydell with shape memory material in order to aid in releasing the basket from its radially restrained configuration for insertion.

Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over Utsugi (US 4198960) and Rydell (US 5163942) as applied to claim 23 above, and further in view of Bates (U.S. Patent No. 6,527,781).

Utsugi and Rydell teach the claimed invention but do not include the tip member comprises a hole, each leg being secured to the tip member by inserting the forward end of the leg into the hole and crimping the tip member. However, Bates teaches a medical retrieval device comprising a three dimensional basket formed of legs joined at a junction (cap) by soldering, gluing or any means known in the art in order to provide an atraumatic wire basket. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combination of Rydell and Utsugi to provide the junction of Bates in order to provide an atraumatic wire basket.

Response to Arguments

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELISSA RYCKMAN whose telephone number is (571)272-9969. The examiner can normally be reached on Monday thru Friday 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on (571)-272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MKR
/Melissa Ryckman/
Examiner, Art Unit 3773

/Darwin P. Erez/
Primary Examiner, Art Unit 3773